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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
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12 UNITED STATES OF AMERICA,  
13  
14 v. Plaintiff,  
15 MIGUEL CASTILLO,  
16 Defendant.

CIVIL CASE NO. 08CV1044  
CIVIL CASE NO. 08CV1289  
CRIM CASE NO. 00CR1502

**ORDER**

17 HAYES, Judge:

18 On May 21, 2008, Defendant Castillo filed a "Motion to Dismiss under the Non-Violent  
19 Offender Act of 2003 §2255" (00cr1502, Doc. # 51) in this district court.

20 On July 7, 2008, Defendant Castillo filed an identical "Motion to Dismiss under the  
21 Non-Violent Offender Act of 2003 §2255" (08cv1289, Doc. # 1) in the District Court for the  
22 Central District of California. This motion subsequently was transferred to this district court  
23 for consideration.

24 **FACTS**

25 On August 14, 2000, the Defendant Castillo entered a plea of guilty to Count one of an  
26 Indictment charging him with Conspiracy to Smuggle Merchandise and to Sell Unapproved  
27 Drugs in violation of 18 U.S.C. §§ 3771 and 545 and 21 U.S.C. §§ 331(d) and 333(a)(2).

28 On November 3, 2000, Defendant Castillo was sentenced to imprisonment for a period

1 of 24 months followed by three years of supervised release and was ordered to pay a fine of  
2 \$4,000.00.

3 On December 28, 2000, Defendant Castillo surrendered to USP Lompoc to serve his  
4 sentence.

5 On April 21, 2001, Defendant Castillo was placed on escape status by the Bureau of  
6 Prisons after it was determined that he was not within the boundaries of the prison camp. On  
7 April 24, 2001, a criminal complaint for escape and a warrant of arrest were issued for  
8 Defendant Castillo in the Central District of California.

9 On July 18, 2007, Defendant Castillo was arrested in Fallbrook, California based upon  
10 the escape arrest warrant. Defendant Castillo was arraigned in San Diego on the escape  
11 charge.

12 On July 13, 2007, the criminal complaint for escape was dismissed. Defendant Castillo  
13 remained in custody to serve the remainder of the 24 months sentence imposed in 00cr1502-K.

14 Defendant moves the court for an order of release on the grounds that he has served his  
15 term of imprisonment. Defendant further contends that he is entitled to early release under 18  
16 U.S.C. § 3624 pursuant to a good time policy.

#### 17 **APPLICABLE LAW**

18 28 U.S.C. §2255 provides that “A prisoner under sentence of a court established by Act  
19 of Congress claiming the right to be released upon the ground that the sentence was imposed  
20 in violation of the Constitution or laws of the United States, or that the court was without  
21 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum  
22 authorized by law, or is otherwise subject to collateral attack, may move the court which  
23 imposed the sentence to vacate, set aside or correct the sentence.”

24 A petition under § 2255 can test only the propriety of the sentence imposed, not the  
25 manner of execution. *United States v. Gidding*, 740 F.2d 770, 772 (9th Cir. 1984). “Review  
26 of the execution of a sentence may be had through petition for a writ of habeas corpus under  
27 28 U.S.C. § 2241.” *Id.* This court has jurisdiction to treat the “Motion to Dismiss” under §  
28 2255 as a writ of habeas corpus under 28 U.S.C. § 2241 because the Defendant is confined at

1 the “San Diego Metropolitan Correction Center.” (Doc. # 51, Page 2).

2 **Waiver of Right to Collaterally Attack the Sentence**

3 The record in this case conclusively shows that the Defendant has waived his right to  
4 bring a § 2255 motion collaterally attacking the 24 months sentence imposed in 00CR1502-K.  
5 In the plea agreement, the Defendant Castillo waived “to the full extent of the law, any right  
6 to appeal or to collaterally attack the conviction and sentence ... unless the court imposes a  
7 custodial sentence greater than the high end of the guideline range ... recommended by the  
8 Government pursuant to this agreement at the time of sentencing.” (Doc. #55-2, Exhibit 1,  
9 pages 12-13). This waiver is clear, express and unequivocal. Plea agreements are contractual  
10 in nature, and their plain language will generally be enforced if the agreement is clear and  
11 unambiguous on its face. *United States v. Jeronimo*, 298 F.3d 1149, 1153 (9th Cir. 2005). The  
12 Guideline sentence contemplated in the plea agreement was 30 - 37 months and the Court  
13 imposed a sentence of 24 months. (Doc. # 36). Pursuant to the terms of the plea agreement,  
14 the Defendant Castillo waived his right to collaterally attack the 24 months sentence imposed  
15 in 00CR1502-K. Further, Defendant Castillo does not challenge the legality of the 24 months  
16 sentence imposed in 00CR1502-K. **Claim to good time credits**

17 Habeas jurisdiction is available under 18 U.S.C. § 2241 for a claim by a prisoner that  
18 he has been denied good time credits without due process of law *Bostic v. Carlson*, 884 F.2d  
19 1267, 1269 (9th Cir. 1989). However, courts require habeas petitioner to exhaust their  
20 administrative remedies before filing a habeas petition. *Huang v. Ashcroft*, 390 F.3d 1118,  
21 1123 (9th Cir. 2004). The Bureau of Prisons has the authority in the first instance to calculate  
22 good time credit and has an established administrative remedy procedure for an inmate to seek  
23 formal review of any aspect of his imprisonment. 28 C.F.R. § 542.10-542.16 (1981).


24 Defendant Castillo has not alleged any attempt to seek review by the Bureau of Prisons  
25 or any adverse decision by the Bureau of Prisons relating to his claim that he is entitled to early  
26 release under 18 U.S.C. § 3624 pursuant to a good time policy and is not entitled to relief  
27 pursuant to 28 U.S.C. § 2241 at this time. Further, the Court notes that the claim by Defendant  
28 Castillo that he has not engaged in any violation of institutional disciplinary regulations plainly

1 ignores his escape from custody.

2 **CONCLUSION**

3 IT IS HEREBY ORDERED that Defendant's "Motion to Dismiss under the Non-  
4 Violent Offender Act of 2003 §2255" (00cr1502, Doc. # 51) is denied; and Defendant's  
5 "Motion to Dismiss under the Non-Violent Offender Act of 2003 §2255" (08cv1289, Doc. #  
6 1) is denied.

7 DATED: August 7, 2008

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9 **WILLIAM Q. HAYES**  
United States District Judge